DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

50896

FILE: B-180412 DATE: AUG 8 1975 97570

MATTER OF: Station allowances for members of Reserve components of the uniformed services called to active duty for less than 20 weeks

DIGEST: In view of the broad authority contained in 37 U.S.C. 405, Volume 1, Joint Travel Regulations may be amended to authorize payment of station allowances at with or without dependent rates as appropriate to members of Reserve components who perform active duty for less than 20 weeks outside the United States or in Hawaii or Alaska and who reside permanently in those areas with their families (if any).

This is in further reference to letter dated November 27, 1973, from the Assistant Secretary of the Army (Manpower and Reserve Affairs), in which our opinion is requested concerning whether Volume 1 of the Joint Travel Regulations (1 JTR) may be amended to provide station allowance entitlements to members of the Reserve components called or ordered to active duty outside the United States for less than 20 weeks, when temporary duty allowances are not payable. The request was assigned PDTATAC Control No. 73-54 by the Per Diem, Travel and Transportation Allowance Committee.

In his letter the Assistant Secretary points out that paragraph M6007 of 1 JTR was amended by change 245, effective July 1, 1973 (currently para. M6006) to provide station allowance entitlements to a member of a Reserve component called or ordered to active duty or active duty for training at a place located outside the United States whenever he is not entitled to per diem in accordance with paragraph M6001 (currently para. M6000), 1 JTR. It is stated that the following are circumstances under which a member of the Reserve components would not be entitled to per diem while performing active duty for periods of less than 20 weeks:

"a. When commuting daily between home or place from which called (or ordered) to active duty and the permanent duty station (JTR, par. M 6001-1a(2)).

"b. When he is newly enlisted and is undergoing processing, indoctrination, initial basic training (including follow on technical training and/or home

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station training), or instruction, and Government quarters and a Government mess are available (JTR par. M 6001-1a(3)).

"c. When performing annual training duty and Government quarters and a Government mess is available (JTR, par. M 6001-1a(3))."

The Assistant Secretary also indicates that in addition to the above-mentioned categories of members, Public Health Service officers called to active duty for the purpose of participating in the Commissioned Officer Student Extern Program are not entitled to per diem.

The Assistant Secretary states that, generally, periods of active duty under Part A, Chapter 6, 1 JTR, are divided into two segments, active duty for less than 20 weeks and active duty of 20 weeks or more. It is indicated that provision is made to cover bona fide extensions of temporary duty in those cases where less than 20 weeks' duty was first contemplated but must be extended for unforeseen circumstances.

Under the pertinent regulations a member performing duty for 20 weeks or more will not be entitled to a travel per diem. However, a member performing such duty is entitled to permanent change of station entitlements provided for members of the uniformed services which would include the payment of housing and cost-of-living allowances, as well as temporary lodging allowances, in appropriate cases, either with or without dependents, on the same basis as members of the Regular components.

In the case of duty of less than 20 weeks, we are informed that the member is treated as if he were on temporary duty including denial of per diem if the conditions of his duty permit the member to do his duty "without disturbing his living pattern."

The Assistant Secretary points out that since some members serving for less than 20 weeks find themselves serving at a location and under conditions where temporary duty allowances are not proper and have been denied by regulation, the question arises as to the rights of these members to station allowances as for members stationed thereat for extended active duty of 20 weeks or

more. It is also indicated that while the payment of per diem under 37 U.S.C. 404(a)(4) is clearly not proper in such cases since the member is not "away from home to perform duty", allowances under the provisions of 37 U.S.C. 405 do not appear to be improper since such allowances may be payable "whether or not he is in a travel status."

It is further indicated that provided annual active duty for training under conditions where both Government quarters and Government mess are available is not involved, it is believed that the payment of station allowances to this class of members with dependents is proper in the following cases where:

> "a. dependents are present in the vicinity of the member's duty station even though they were not moved to the area incident to his military service;
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> "b. the member was not specifically authorized to have his dependents in the area, and;
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> "c. he does not meet the normal tour of duty requirements contemplated by JTR, par. M 4300-1, Item 2."

The Assistant Secretary points out that a member in such circumstances will have no right to move dependents or household goods from the area upon relief from active duty since the active duty orders required no movement away from the former residence.

It is also noted that in the case of members without dependents present in the vicinity of the overseas duty station, payment of station allowances as members without dependents would appear to be proper unless he were performing annual training duty and both Government quarters and mess are available.

The Assistant Secretary requests our comments with regard to the foregoing.

The legislative history of the statutory provision for station allowances for military personnel serving in overseas areas, now contained in 37 U.S.C. 405, shows that it was intended by the Congress to provide a means for reimbursing such personnel for the excess of foreign living costs over the costs in the United States.

The language of the above-cited provision authorizes the Secretary concerned to make payment of a per diem, considering all the elements of the cost of living to members of the uniformed services under their jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary and incidental expenses, to such a member who is on duty outside the United States or in Hawaii or Alaska whether or not he is in a travel status.

Paragraph M4301 of 1 JTR provides the housing and cost-of-living allowances are authorized for the purpose of defraying the average excess costs experienced by members on permanent duty at places outside the United States.

We have indicated in the past, that, a reservist's training duty assignment of short duration is not permanent duty within the generally accepted meaning of the term permanent duty assignment, and thus payment of station allowances provided for in chapter 4, 1 JTR requiring a permanent assignment overseas or in Hawaii or Alaska was not authorized. See 32 Comp. Gen. 444 (1953) and 45 Comp. Gen. 798 (1966).

However, in 45 Comp. Gen. 794; supra, we have referred to the broad authority of 37 U.S.C. 405 and 411, under which the Secretaries concerned are authorized to prescribe regulations governing the payment of station allowances to a member on duty outside the United States or in Hawaii or Alaska, "whether or not he is in a travel status", except that dependents may not be considered in determining the allowances for a member in a travel status. We indicated that it was our opinion that this authority is broad enough to support the issuance of regulations authorizing the payment of a temporary lodging allowance incident to overseas training duty assignments of short duration.

Although in that decision the question presented involved the payment of temporary lodging allowances to members of the Alabama National Guard performing short periods of duty overseas, reference was made therein to questions considered in the decision 45 Comp. Gen. 798. One of those questions related to the payment of cost-of-living allowances to a member of the Hawaii and Colorado National Guards called to active duty for a short period in Hawaii.

The changes made in 1 JTR as a result of that decision did not provide for payment of station allowances in the circumstances now in question.

In considering the questions presented we have reviewed the decisions of this Office relating to whether a member is entitled to increased station allowances on the basis of dependents residing in the vicinity of his duty station outside the United States or in Hawaii or Alaska. The determining criteria as to entitlement under 37 U.S.C. 405 and pertinent provisions of 1 JTR has been whether the dependents established a residence in the area in a military dependent status or whether their residence in the area was solely a matter of personal choice. It has been held that for the member to be entitled to station allowances at the with dependent rate, the dependents must be authorized travel and transportation at Government expense and be in the vicinity of the member's duty station in a military dependent status. See 49 Comp. Gen. 548 (1970) and cases cited therein. This rule was applied in connection with entitlement to increased station allowances when dependents traveled to Alaska as a designated place incident to the member's assignment to a restricted area in Alaska where dependents were not authorized. Since the designated location was not in the vicinity of the member's duty station the dependents were not considered to be in a military dependent status even though their travel and transportation to the area had been accomplished at Government expense, we held in the circumstances that station allowances on account of the dependents were not payable. 53 Comp. Gen. 339 (1973).

Those decisions, however, relate to station allowances for members on extended active duty where entitlements to travel of dependents are applicable. In the situation under consideration the members do not become entitled to dependent travel because of the short periods of duty involved. Also, the member's presence in the area of his Reserve unit is also not the result of travel in a military status. Therefore, we do not believe that the restrictions imposed in 53 Comp. Gen. 339, supra, and similar cases cited with regard to payment of station allowances on account of dependents, must be applied in this situation.

In the circumstances and in view of the broad authority given the Secretaries concerned in 37 U.S.C. 405, we believe that regulations authorizing appropriate station allowances for members of the

Reserve components while on active duty outside the United States or in Alaska or Hawaii and who reside permanently in those areas with their families (if any) for less than 20 weeks at the with or without dependent rates as appropriate would not be objectionable.

Accordingly regulations may be promulgated to provide station allowances at the with dependent or without dependent rate as appropriate for members of Reserve components outside the United States or in Alaska or Hawaii even though the member's dependents were not moved to the area incident to military service, the member is not specifically authorized to have his dependents in such area, and the normal tour of duty requirements as prescribed by regulation for members on extended active duty are not met.

The submission is answered accordingly.

R.F.KELLER
Comptroller General
of the United States